SSRC
Conflict Prevention and Peace Forum

Analyzing the Impact of the Dodd-Frank Act on Congolese Livelihoods

Prepared for the DRC Affinity Group by
Jeroen Cuvelier, Steven Van Bockstael, Koen Vlassenroot & Claude Iguma*
November 2014

Introduction

The protracted conflict in eastern DRC is often explained by referring to the 'conflict minerals' narrative, propagated by activist NGOs, and frequently occurring in media and think tank publications.[1] Following this narrative, the various armed groups operating in eastern DRC are able to survive largely due to the profits they incur from their involvement in the local artisanal and small-scale mining sector. This involvement tends to take different shapes and varies from direct ('boots on the ground' in certain mines) to indirect (demanding rents from miners and traders in the region) ways of profiting.

This dominant perspective on violence in eastern Congo has led policymakers and representatives of the international mining and electronics industry to develop several initiatives to either ban Congolese conflict minerals from the international market or to make the trade more transparent. Following the successful campaigns to ban 'conflict diamonds' at the turn of the century, and largely inspired by the resulting creation of the Kimberley Process, which today governs the international diamond trade, a first conflict minerals campaign can be traced back to 2001 and initially focused mainly on coltan. Yet it was after the start of the CNDP military campaign in 2006 that most of the current initiatives were developed, focusing more widely on the so-called 3T's (Tantalum (coltan), Tin (cassiterite), Tungsten) and later on also gold. Several initiatives promoting transparency and traceability of mineral exploitation and trade have been launched and calls have been made for legal frameworks prohibiting the import of conflict-related resources. Some of these initiatives were introduced by the mining industry. Notable government-led initiatives include the OECD Due Diligence Guidelines and the introduction of specific legislation by the US Congress, the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Attached to this Dodd-Frank Wall Street Reform and Consumer Protection Act, is a small section that requires companies listed on the US stock exchange to provide specific assurances that any products that they have manufactured or contracted to manufacture do not contain minerals "that directly or indirectly finance or benefit armed groups" in the DRC or its neighbors. Although the Dodd-Frank Act's legal effects thus far are uncertain since its first reporting deadline was in May 2014, it has created a climate of uncertainty among minerals brokers and, in particular, consumer electronics firms, as to whether or not their current supply chains can be considered 'DRC conflict-free' or not. A preemptive ban on buying Congolese minerals has been the

* Jeroen Cuvelier is a senior researcher at the Conflict Research Group (University of Ghent) and the Special Chair Humanitarian Aid and Reconstruction (Wageningen University); Koen Vlassenroot is Professor at the Conflict Research Group (University of Ghent); Steven Van Bockstael is a PhD Candidate at the Conflict Research Group (University of Ghent); and Claude Iguma is a PhD Candidate at the Special Chair Humanitarian Aid and Reconstruction (Wageningen University).

easiest response: many companies gave preference to shifting their supply chains elsewhere rather than trying to be in accordance with this new regulatory framework. Also the DRC government enacted a minerals export ban. Even if this ban was limited in time, it introduced a reconfiguration of power structures and trading networks, in some cases in favor of networks dominated by the FARDC.

This paper presents a detailed study of how the Dodd-Frank Act in particular has affected several mining communities in eastern Congo, and the extent to which various conflict minerals initiatives have been implemented on the ground. Besides a desk-based literature review, sources used include interviews with several industry and civil society stakeholders, the authors' regular attendance of public and non-public meetings related to the various conflict minerals initiatives over the past few years, as well as the authors' long-term field research activities in eastern DRC, including specific research visits by the authors and their associates for this study, conducted in March 2014 and encompassing northern Katanga, South Kivu and North Kivu.

The paper concludes that even if no hard claims can be made about a direct link between the arrival of Dodd-Frank and current socioeconomic problems in eastern DRC's mining areas, there are strong indications that the Dodd-Frank act has reinforced a number of dynamics within Congo's mining sector. One direct consequence of the act was the announcement of the Kabila mining embargo, which was in force between 9 September 2010 and 10 March 2011 and which has had a paralyzing effect on the regional economy and a dramatic impact on living conditions, not only in eastern Congo's mining sites but also in urban centers. But the Dodd-Frank has also served as a wake-up call. Participants in eastern DRC's mining industry acknowledge that the law has increased their awareness of the urgent need to address a number of negative aspects of the mining industry such as militarization, corruption and exploitation of women and children. Dodd-Frank has the merit of having sped up the process of mining reform and of having stimulated a stronger Congolese involvement in due diligence initiatives. It has also changed attitudes and assumptions of electronics manufacturing companies and through them the mining companies themselves. As opposed to five years ago, there is now a much wider recognition that resource supply chains should be considered an essential part of the broader electronics manufacturing process, including any and all aspects of CSR and business ethics. Nevertheless, there is a widespread concern about the slowness with which these mining reform initiatives are being implemented. As a result, a situation has emerged in which the large majority of artisanal mines in eastern DRC continue to function in a grey zone between legality and illegality, making it very hard for local mining operators to get their minerals sold on the international market, especially to Western clients and at reasonable prices. Congolese artisanal miners also believe the push for further formalization of the artisanal mining sector is part of a larger process that wants to promote a radical switch from small-scale to large-scale mining.

The origins of Dodd-Frank 1502

There is a widespread assumption that natural resources are one of the key drivers of conflict in eastern DRC. The dominant narratives on the war,[2] are that Congo is 'cursed' by its riches, that greed is the main conflict motive, and that armed groups are using revenues from the exploitation and trade of natural resources to finance their war efforts and to enrich themselves. Consequently, it is often argued, the easiest and most effective way to end the conflict is to prevent armed groups from making money through the sale of minerals from the areas under their control.

These perspectives on the DRC violence are both inspired by academic debates on the links between resources and conflict and by large-scale campaigns of international organizations aimed at stopping the DRC conflict through the cutting of the links between resources and armed groups. Already at the end of the 1990s and the beginning of the new millennium, European and North American advocacy groups such as Global Witness, Partnership Africa Canada, Human Rights Watch and Amnesty International started publishing reports about the looting of Congolese natural resources, expressing their worries and indignation over the fact that the international community failed to prevent key players in the Congolese conflict from enriching themselves and financing their war efforts through the illegal sale of minerals and timber on the international market.

As a result of growing pressure on the part of international NGOs and human rights organizations, which in 1999 had already successfully lobbied for the creation of the Kimberley Process (a mechanism aimed at solving the problem of 'conflict diamonds'), the UN Security Council decided to set up a panel of experts tasked with investigating "the illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of Congo." Between 2001 and 2003, the panel released three reports that caused a great deal of controversy, not only because they contained detailed information about the shady business deals of a number of well-known multinationals, but also because they described the personal involvement in the looting operations of several prominent politicians and heads of state from neighbouring countries.[3]

The UN Panel's revelations led to the creation of parliamentary commissions of inquiry in Belgium and Uganda, an investigation by the UK Department of Trade and Industry, and a series of talks with multinationals hosted by the national contact points of the OECD. Moreover, the Panel's findings have served as important sources of inspiration for newly created and highly influential advocacy groups in the US such as The Enough Project and the Eastern Congo Initiative.

Introducing conflict minerals initiatives

Since the publication of the Panel's findings, a plethora of initiatives have been developed in order to deal with the repercussions of the UN's conclusions regarding the role of natural resources in fuelling violence in eastern DRC. As one observer recently put it, "the number of supply chain monitoring initiatives alone […] has become almost as dizzying as the list of armed groups involved in the conflict."[4]

One of the first initiatives was the so-called *Durban Process*. Although nominally inspired by the Kimberley Process for conflict diamonds, the Durban Process is essentially a local initiative designed to protect wildlife (notably gorillas being hunted for bushmeat) that had come under threat due to the pressures of the Congo war. Its premise was the overpopulation of the Kahuzi-Biega Natural Park by IDPs and illegal artisanal miners, which was resulting in serious threats to fauna and flora in the park. The program sought to remove artisanal mining activities from within the boundaries of the park and operated from a conservationist mindset.

Other early initiatives (starting in 2006-2007) were government-led research projects to ascertain the feasibility of *geochemically tracing* raw materials based on the specific characteristics of their locations of original (mine). The Belgian and German governments for example, funded several of these efforts. The German initiative in particular, was eventually piloted in the DRC and Rwanda, and this expertise later on

inspired regional efforts such as the ICGLR. The Pact on Security, Stability and Development in the Great Lakes Region, which was signed in December 2006 by countries from the region and was supported by the UN and the AU, provides in its article 9 for the installation of a "regional certification mechanism for the exploitation, monitoring and verification of natural resources within the Great Lakes region." This *ICGLR Regional Certification Mechanism* is currently being piloted, with Rwanda and the DRC having exported ICGLR-certified minerals.

Responding to the UN reports in the early 2000s and consumer activism that was beginning to refer to the conflict minerals narrative, also several major multinational corporations started to respond. Although primarily driven by corporate social responsibility concerns, these initiatives were strictly voluntary in nature. The Global e-Sustainability Initiative was launched by predominantly European corporations and heavily focused on the telecommunications industry. A predominantly American group of companies formed the basis for the Electronic Industry Citizenship coalition, which recruited more broadly in the electronics industry. Membership of these initiatives has in many cases been mutual, and both initiatives have since closely collaborated. Most notably was the joint foundation of the *Conflict Free Sourcing Initiative*, which in turn led to the creation of the Conflict Free Smelter (CFS) Program. The latter has united smelters, key stakeholders in the mineral supply chain linking upstream with downstream companies. The idea behind the CFS is to use the natural leverage of the smelters as occupiers of a key chokepoint in the supply chain: companies sourcing from CFS-participating smelters would be able to claim they are not sourcing conflict minerals, while reducing the burden of proof by relying on the smelter's participation in the CFS. The CFS system is based on the established 'trader' model, but some downstream companies have expressed interest in getting involved in establishing closed pipelines, linking them directly to select mine sites. Given the cyclical nature of the coltan industry in particular, this would also deliver a specific commercial advantage to those companies. The most prominent example of such a closed pipeline model is the Solutions for Hope network sourcing coltan, led by Motorola.

Specifically mentioned in the SEC's Dodd-Frank S1502 regulation is the *OECD's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, which provides detailed recommendations to companies on how to conduct due diligence to ensure that their activities in 'conflict-affected and high-risk areas' respect human rights and do not contribute to conflict. It has been supported by the UN Security Council with regard to the work of the Group of Experts on the Democratic Republic of Congo, and has been negotiated as a multi-stakeholder process among OECD and ICGLR governments, the United Nations, and industry and civil society representatives. The current due diligence guidance and its Supplements specifying procedures for Tin, Tantalum and Tungsten, and Gold, formally supported by an OECD Recommendation in May 2011 and endorsed by the ICGLR as part of the Lusaka Declaration of December 2010 as well as a number of other non-OECD and non-ICGLR countries, has its origins in a series of meetings in 2009-2011.[5] It should be stressed that "observance of this guidance is voluntary and not legally enforceable,"[6] but its incorporation by the SEC as a selected framework that can help companies to comply with Section 1502 of the Dodd-Frank Act, has greatly increased its stature.

The most dominant initiative when it comes to actually certifying minerals as conflict-free is the ITRI Tin Supply Chain Initiative, or *iTSCI*. Originally developed (2008) and tested (2010, in South Kivu) by the tin industry (through the International Tin Research Institute), it has since expanded to include tantalum and tungsten ores as

well. It is the main supplier of 3T minerals from mines in the provinces of eastern DRC that have been verified as conflict-free, and follows the model of a closed pipeline. Through a 'bag and tag' process, individual ore shipments can be traced back to their points of origin, using the bar-coded tags attached. At various points in the supply chain, data is collected and fed into the iTSCI database. The iTSCI program and its various participants at different places in the supply chain are yearly audited.

While gold, as the final element in the '3TG' acronym that has become shorthand for Congo Conflict Minerals, is perhaps the most easily smuggled resource among this group of four, it has received far less attention than Coltan/Tantalum, Tin, and Tungsten. The specifics of gold—it's high value and low weight making it easy to smuggle, as well as the ease with which it can be processed—make it among the most difficult resources to control. While a number of initiatives exist that try to eradicate 'conflict gold' from the global marketplace, their impact in the DRC is limited, as these initiatives are mostly oriented towards downstream companies seeking clean supplies. Also, the strict nature of their sourcing protocols makes the participation of artisanal and small-scale miners extremely difficult. Under the auspices of the ICGLR, an effort is currently underway to implement a pilot project aimed at formalizing artisanal gold mining in eastern DRC, a first step towards inclusion in a conflict-free supply chain.

Probably the biggest issue facing these initiatives is their sometimes questionable inter-operability. While iTSCI has achieved a near monopoly, it lacks public accountability and is reticent to share detailed non-aggregated information. This makes it difficult to engage with the ICGLR's Regional Certification Mechanism, for example, which requires third party auditing. [7] Different nuances in the various initiatives sometimes result in rather awkward situations: while the OECD due diligence guidance is recommended by the SEC as a framework to work towards compliance with the Dodd-Frank Act, it is perfectly possible to be compliant with the OECD guidance, while at the same time being unable to report a DRC conflict-free status with regard to Dodd-Frank's reporting requirements.

Conflict minerals initiatives currently operating

Centres de négoce	MONUSCO	3TG
Certified Trading Chains	BGR (German Geological Survey), bilateral with Rwanda, DRC, Burundi	3T
Conflict Free Gold Standard	World Gold Council	G
Conflict Free Smelter Program	EICC/GeSI	3TG
Conflict Free Tin Initiative	Dutch government, private sector	Tin (closed-pipe supply chain)
ICGLR Regional Certification Mechanism	International Conference for the Great Lakes Region, GIZ (German Development Cooperation)	3TG

ITRI Tin Supply Chain Initiative (iTSCI)	International Tin Research Institute, Tantalum-Niobium Study Centre	3T
OECD Due Diligence Guidance	OECD	3TG
Public-Private Alliance for Responsible Minerals Trade	Corporate, government (US DoS), civil society actors	3TG
Responsible Gold Guidance	London Bullion Market Association	G
Responsible Sourcing Guidance	Dubai Multi Commodity Center	3TG
RJC Code of Practices, Chain of Custody Standards	Responsible Jewellery Council	G
Solutions for Hope	Motorola, AVX, etc.	Tantalum (closed-pipe supply chain)

Lobbying efforts by civil society groups

As mentioned already, the first conflict minerals campaigns of international organizations mainly targeted coltan, with "coltan has become symbolic of how ordinary people on the other side of the world, through their consumption habits, are implicated in conflict and injustice."[8] The first such campaign, following the publication of the United Nations' first report in 2001, was that of a Belgian alliance of development and human rights NGOs. This campaign ("Geen bloed aan mijn GSM" - no blood on my cell phone) utilized the mobile phone as a device connecting a largely marginalized Central African conflict with Western consumers, through one of its key components, an unfamiliar mineral called coltan. Often cited in this regard is the sudden spike in coltan prices in late 2000, blamed on the production requirements of the PlayStation 2 game console. In reality, the price spike was caused by speculation rather than any serious coltan shortages.[9] The campaign of a network of Belgian NGOs was followed by other initiatives. Several of these campaigns, such as the Fatal Transactions coalition, already had previous experience dealing with conflict diamonds. This experience has also influenced thinking on how to combat these conflict minerals, as initial discussions of non-diamond conflict minerals frequently raised the option to expand the Kimberley Process Certification Scheme, an option that ultimately proved not feasible.

While correctly pointing at natural resources as a conflict driver in eastern DRC, these awareness-raising campaigns resulted in an over-magnification of existing trends and facts. Although the involvement of armed actors (and their proxies) in mining activities both during the war and the post-conflict period cannot be ignored, the prevailing perception of this issue often lacks a nuanced understanding of the complex interaction between resources and conflict. This is partly the result of a lack of empirical data on conditions in the mining centers and local trading networks, (only a limited number of cases have been publicly well-documented so far) but also of the reductionist and simplified narrative presented by different advocacy strategies. One example was

the often cited claims that 80% of the world's coltan reserves were located in the DRC, or that 80% of global coltan production came from conflict areas in the DRC. While such figures contributed to the sense of urgency that advocacy campaigns were evoking, they were rarely supported by empirical evidence. Current informed estimates put the Congolese part of global coltan reserves at around 7 to 8 per cent, while "for most of the 2000s the country may have produced around 20% of the world's tantalite."[10]

Also in the US, attention for the Congo wars and the role of natural resources was growing. A pivotal role was played by the Enough Project, an organization which has been trying to get the eastern DRC crisis more prominently on the political agenda in the US. Although the organization's initial publications "emphasized the complex nature of the violence there and the need for multi-pronged approaches to crisis resolution", starting in April 2009 the Enough Project started to frame its campaigns around the conflict minerals narrative.[11] Using YouTube videos where "your cell phone" is directly blamed for the violence in eastern Congo,[12] and making use of celebrity endorsements to further their campaign, the Enough Project focused on grassroots activism in the US. Notable in this regard are the Conflict Free Cities, an initiative whereby US cities were to be encouraged to "stand up for the people of East Congo" by passing a resolution voicing their demand for conflict-free minerals.[13] Another initiative launched by the Enough Project is the Conflict-Free Campus Initiative, which sought to "draw on the power of student leadership and activism to bring about peace in the Congo", by encouraging universities to pressure electronics companies for conflict-free products.[14] At Stanford University, student activists organized a conference in April 2011 ("From Your Campus to the Congo: Conflict Minerals and their Impact") in order to share experiences and lessons learned on "how American universities can affect conflicts occurring thousands of miles away".[15]

Conflict minerals campaigns in the US

As a result of growing pressure from these lobby campaigns in the US, political support started rising in favor of actions aimed ending this Congo conflict through the interruption of its alleged financial lifeline. In 2008, US Senator Sam Brownback first proposed the Conflict Coltan and Cassiterite Act (S.308), co-sponsored by Senator Richard Durbin, which would make the importation of coltan and cassiterite (and products in which they are contained) from the DRC illegal, with appropriate civil and criminal penalties. The proposal did not make it into a law as it never received a floor vote,[16] but was subsequently re-introduced in 2009 as the Congo Conflict Minerals Act (S.891), co-sponsored by Senators Durbin and Feingold, with 20 other Senators following in subsequent months. The latter was a more detailed version of the Coltan and Cassiterite Act, but did not include penalties for non-compliance. In the US House of Representatives, a Conflict Minerals Trade Act (HR 4128) was proposed a few months later, by Representative Jim McDermott.

Like the Coltan and Cassiterite Act, the Congo Conflict Minerals Act never became law, because of insufficient political support. However, its sponsors refused to give up, this time seeing "an opportunity in the free-wheeling debate surrounding Dodd-Frank."[17] The bill was duly transformed into an amendment to the Dodd-Frank Act, of which it would become Section 1502.

The Dodd-Frank Wall Street Reform and Consumer Protection Act is a voluminous piece of legislation focused on reforming the US financial system, in the wake of the 2008 financial crisis. Strikingly, however, several of its provisions seem

unrelated to the daily activities of Wall Street bankers. Section 1502 of this act requires companies to disclose whether they are incorporating certain minerals in their products that come from the DRC or adjoining countries. Although the 3TG-group is specifically mentioned, the actual text of the law refers to conflict minerals, with the definition referring not only to the 3TG group, but also to any other mineral that can be determined, by the US Secretary of State, to be financing conflict in the DRC or its neighboring countries. Like the Congo Conflict Minerals Act from which S1502 has been derived (but in contrast to the earlier proposal for a Coltan and Cassiterite Act), Section 1502 does not seek to penalize companies whose sources are not DRC conflict-free. Another significant difference is that Section 1502, unlike the Congo Conflict Minerals Act, does not require the US government to "assist and empower communities in the eastern Democratic Republic of Congo whose livelihoods depend on the mineral trade."[18] As a well-connected interviewee in *Obama's Law* argued, whereas the Conflict Minerals Act was relatively well-balanced – recognizing the need for assistance to the Congolese people to ameliorate the mining sector and linking this with repressive measures, Section 1502 was unfortunately restricted to repressive measures.[19]

The specific regulations needed to be put this into practice, where left for the Securities and Exchange Commission (SEC) to develop. However, the SEC is evidently not the best placed actor within the US government to develop the appropriate guidelines, a fact which the Commission itself has readily acknowledged.[20] The lengthy process whereby interested stakeholders were requested to submit their comments to the Commission has resulted in significant delays in the promulgation of these regulations. While the initial target date for the publication of the final rule would be between August and December 2011, this deadline was twice extended, with a final rule adopted on 22 August 2012.[21]

First reporting from companies is due in May 2014, however industry observers have remarked that the law will not be fully implemented until two to four years from now, as the regulations allow for an interim period (two or four years depending on company size) during which companies are given time to determine the extent of their liability and the ways in which they will need to enact the required due diligence efforts.

Industry responses to Dodd-Frank S.1502

The most immediate effect of the Dodd-Frank Act, with the possible exception of the DRC government's self-imposed export ban shortly after the law was passed, has been the sudden rush of companies discovering existing efforts to increase transparency in the Great Lakes mining sector. With the legal burden now introduced by the Dodd-Frank Act, these initiatives were suddenly transformed from the voluntary efforts of a relatively small group of parties, to necessary tools to comply with US legislation.

Furthermore, the requirement that companies' due diligence efforts have to be audited by independent, third party auditors has resulted in the creation of a niche industry dedicated to delivering conflict minerals-related services. Originally dominated by a handful of relatively small, specialized consulting firms with previous expertise in dealing with artisanal and small-scale mining (ASM) for multinational mining corporations and for international donors with an interest in natural resource governance and related development projects, these pioneers are now increasingly joined by more generalist consulting and auditing firms that have sought to offer conflict minerals services to their clients. Indeed, a notable presence at the 2014 Electronics Industry Citizenship Coalition (EICC)-hosted 13th Conflict Free Sourcing Initiative

Workshop [22] have been such third-party service providers, many of whom having recognized a growing business opportunity. Likewise, the proliferation in recent years of conflict minerals symposia organized by industry-related groups and aimed at raising awareness within the private sector can to a very large extent, be linked to the legislative pressure imposed by Dodd-Frank.

This all being said, a business opportunity for some often implies an increasing financial burden to others: whether most of the due diligence is done in-house or by external consultants, there is still a significant cost associated with this process, in addition to the cost of an external audit of said due diligence efforts. While the SEC came forward with an estimate of this cost to US-listed companies, many industry stakeholders feared that the cost of compliance with the Dodd-Frank Act would quickly grow beyond the SEC's original estimates. A study conducted by Tulane University, conducted upon request by Senator Durbin, looked at the estimated cost of compliance, and concluded that "the cost of implementing these actions comes to $7.93 billion",[23] several degrees of magnitude higher than the SEC's initial estimates, which were later increased.

In October 2012, shortly after the SEC published its final rules, a coalition of US industry stakeholders filed a lawsuit to block the law. While the rule was upheld by federal court, an appeal was filed in August 2013. The plaintiffs argued that "the SEC made several regulatory choices that place unprecedented and extreme compliance burdens on America's job creators without ending violence in the DRC."[24] It is unclear to what extent companies have been postponing or delaying their compliance efforts pending the court's decision. However, according to a prominent law firm offering conflict minerals services, "since early 2014 […], many companies that slowly had been ramping up their compliance now have a much greater sense of urgency, in some cases bordering on panic"[25]

On 14 April 2014, the US Court of Appeals for the DC Circuit ruled that the requirement imposed on companies to report to the SEC and on their websites that their products have not been found to be 'DRC Conflict-Free', is a violation of the US 1st Amendment. It is now the duty of a lower court to determine whether this violation is due to the SEC's implementing rules, or the Dodd-Frank Act itself. Significantly, the Court dismissed all other challenges to Section 1502, upholding the remaining SEC regulations.[26]

Nevertheless, no matter what the final outcome of this legal challenge will be, it is worth noting that Section 1502 does not provide for any kind of legal penalties for non-compliance: it has always been understood by most actors that the only penalties for non-compliance would be risk of brand damage associated with a public shaming by NGOs. Therefore, most of the larger companies will likely continue their compliance processes, regardless of the court's ultimate decision. It should also be noted that several of these large companies have publicly distanced themselves from efforts to repeal the SEC rules.

Mixed views, local livelihoods and growing awareness

Even if much speculation exists about the impact of the Dodd-Frank act on people's livelihoods in mining areas, it is difficult to make a clear assessment of the direct relation between the announcement of this act and changes in the artisanal mining sector in eastern DRC. Several other internationally supported initiatives followed

since, while other dynamics such as world market price fluctuations, and local political, environmental and security issues also have had an impact on this sector. It is therefore very difficult to assess which factor – or combination of factors – has had the greatest influence on the evolution of people's livelihoods in the past three and a half years.

Many of the people interviewed for this paper indicated that Dodd-Frank and Kabila's immediate decision to suspend all mining activities in eastern DRC had caught them by surprise. They did not see it coming and certainly had no idea of how it would affect their daily activities and their ability to secure their livelihoods in the long run. There is a general conviction among respondents that the Kabila embargo was the direct outcome of American pressure on the Congolese government to tackle the problem of conflict minerals as soon and thoroughly as possible. At the same time, it is a shared impression that decision-makers—both at the international and national levels—did not give much thought and consideration to the impact of their initiatives on people's everyday lives in Congo's mining areas.

Much frustration also exists from the fact that mining operators were given little or no information about what the new legislation entailed. One NGO worker involved in a sensitization campaign about the various mining reform initiatives in North Kivu explained that most artisanal miners in eastern DRC did not seem to know even the existence of the Dodd-Frank Act.[27] In the territory of Fizi in South Kivu, several interviewees complained that only a small group of powerful people at the local level—customary authorities and leaders of mining cooperatives—had a general idea of the content of the law. In their view, the ordinary population had been completely left into the dark, even though they were the ones potentially most affected by the new legislation. One member of a mining cooperative expressed his feeling of impotence as follows:

> Not a single clause, paragraph or passage is known by us, who are expected to know the law best and tell others about it (…) It is only by chance that we found out there is a law called Dodd-Frank, which fights against violence and forbids blood minerals.[28]

Despite these complaints about the lack of information about Dodd-Frank and other due diligence initiatives, several civil society groups and mining cooperatives are trying to sensitize the inhabitants of eastern DRC's mining areas,[29] and some actors have taken steps to explain their grievances to the authorities. ANEMISA, for instance, the association of mineral buyers of South Kivu, has sent several petitions and letters of complaint to the authorities in the course of the embargo period, between September 2010 and March 2011. The President of ANEMISA told us that, thanks to his critical attitude, he received an invitation for a government-organized workshop in Kinshasa in February 2011, during which different groups of stakeholders in the mining industry discussed and signed the so-called *'actes d'engagement'*, a list of commitments with regard to their activities in the post-embargo era.[30]

When referring to the socioeconomic changes attributed to the Dodd-Frank act, a general consensus exists among respondents. Overall, our interviewees painted a very negative picture of what life had been like during the Kabila embargo, emphasizing the ban's paralyzing effect on the regional economy and holding it responsible for a wide variety of negative developments that have occurred since then, including rising levels of unemployment, school abandonment, armed group recruitment, criminality, insecurity and indebtedness.[31]

This corresponds with the findings of Sara Geenen, who, between November 2010 and February 2011, did extensive research on the impact of the mining ban in South Kivu. According to Geenen, "the ban had an immediate effect on miners and their families, but also on petty traders and transporters, women selling vegetables on the market and school teachers in and around the mining sites." Geenen argues that the Kabila embargo gave rise to increasing levels of malnutrition in certain mining areas, to a growing number of school drop-outs (as parents and children were no longer able to pay school fees), to difficulties in terms of paying for healthcare, and to a slowdown of the regional economy, with many Kivutians staying away from stores and marketplaces and refraining from buying food, clothing and electronic equipment. Moreover, Geenen shows that Kabila's mining ban led to a situation in which surrounding agricultural regions stopped selling their products in the mine sites.[32] These observations are also confirmed by the president of the FEC in Shabunda, who told us:

> Before 2010, we lived a normal life, but when the embargo arrived, it was like a thunderbolt, we believed it was the end of the world; everything stopped in a city that was really enclosed, trade was interrupted as the people were hiding their goods, noticing that something abnormal was happening. There was a total paralysis of activities, while normally the mines are injecting money into the local economy and are keeping us alive. (…)[33]

In Shabunda, the vastest territory of South Kivu, agriculture, and artisanal mining have been the principle sources of income for the past few decades. Shabunda's subsoil contains considerable deposits of gold, cassiterite, diamonds, iron, and coltan.[34] The remoteness of this territory and bad shape of local infrastructure have a considerable effect on trading opportunities though and are discouraging agricultural initiatives.[35] Moreover, local transporters travelling in the direction of Shabunda face serious security risks, as drivers are frequently kidnapped and/or robbed by armed groups.[36] Given Shabunda's high level of dependence on commodities and supplies from outside the territory, it is easy to understand that the sharp decline of transport by air during the Kabila embargo had a dramatic impact on local livelihoods.[37]

Also in the Lemera tin mine in South Kivu, the Dodd-Frank Act has caused some (indirect) effects on local livelihoods. In November 2012, the UN Panel of Experts reported that cassiterite prices in Lemera had dropped considerably: whereas, in 2010, cassiterite was sold at 8 US$ per kg, in May 2012, it was sold at 2.5 US$. The Panel also stated that the number of diggers at the mine was showing a clear downward trend, going down from 500 at the beginning of 2012 to merely a 100 at the time of the preparation of the UN report.[38] In July 2013, according to Ben Radley, the producer of *Obama's Law*, a documentary on the subject, the number of people working in the mine had gone up again, to approximately 300, which is still far below the pre-suspension level.[39] In Lemera, Dodd-Frank did not only affect and change the livelihoods of the people working in the mine, but also those of other inhabitants of the mining town. One woman who used to run a restaurant in Lemera told Radley:

> I had a big problem because the people came to eat but did no longer pay. So at one point I found myself without capital, and this created a serious problem in my life, I didn't eat as before, I couldn't look after my responsibilities as mother of the family as before, and even the children who studied were no longer able to continue. And today, I have abandoned the work of 'restauratrice' and have a

capital of just 10 USD and am now selling ripe bananas in the street to support the family.

The chairman of Lemera's artisanal miners told Radley that the sharp decline of *creuseurs*' (diggers) spending power had disastrous consequences for the local economy in the mining town:

> Because the pit owners had no more money to continue their activities, they stopped operating and even the number of diggers has diminished considerably. (…) Previously, there were about 2000 *creuseurs*, in other words, 2000 people who had money to spend in the evenings and who could make money circulate during the day. But with the Obama law, we were down to approximately 300 to 400 *creuseurs*, who did not have any money: a kilogram of minerals used to be sold at 9-10 US$ and was now sold at 3-4 US$ (…) There were closures of bars and restaurants, taxi motos stopped circulating, houses didn't find any tenants, construction sites stopped functioning, there was less traffic and poverty entered our houses.

For many artisanal miners, the work in the mine was their sole source of revenue. Consequently, when mining activities started going downhill as a result of Kabila's mining embargo, they had very little to fall back upon:

> Before the Obama law, I was the owner of a pit. I was a very respected man, who had a lot of power and money thanks to the pit, because I had a lot of minerals to sell and this allowed me to organize my life (…) I even succeeded in building a very nice house and letting my children study in very good conditions. But ever since the arrival of the Obama law, my life has been turned upside down. I have lost everything I had (…) I was forced to sell my house to be able to stay afloat and I'm no longer a pit owner.

Given these illustrations of some of the effects attributed to the Dodd-Frank Act and related policies, some of our respondents also pointed to some positive effects. Especially in places where high-profile due diligence initiatives are being implemented, the Congolese military appears to become increasingly aware of the fact that their presence at mine sites is no longer tolerated ('*ils ont compris*'). A public servant gave the example of a recent incident in Nyabibwe, in the Kalehe territory in South Kivu, where an ordinary citizen got into an argument with FARDC soldiers. When the soldiers tried to arrest the man, he fled into the Kalimbi mine. The soldiers did not dare to enter the mine for fear of negative publicity and therefore asked one of the mining cooperatives to have the man transferred to the *chef de poste*.[40]

Some claim that today, the majority of the 3T mining sites ('67 per cent') are no longer under military control.[41] Other observers are less optimistic and argue that some FARDC officers have developed strategies to circumvent the restrictions on military's involvement in mining activities. A good example of this can be found in Kamituga, where soldiers are reportedly using their wives to continue controlling the mining business. In addition to this, they are also using other intermediaries, such as those who can keep an eye on their pits in the mine.[42]

A second positive aspect of the introduction of Dodd-Frank, according to some informants, has been the search for—and revalorization of—alternative livelihoods, in other words, economic activities outside the mining sector that enable former members

of the artisanal mining population to make ends meet. In a focus group discussion with civil society groups in Bukavu, one participant suggested that Dodd-Frank may have indirectly contributed to a modest revival of agriculture in the eastern part of the country: according to her, in some places, people were trying to switch back to their old practices of tilling the land.[43]

A third positive development attributed to Dodd-Frank is that it had the effect of a wake-up call. People say that the law has made participants in the mining business more aware of the consequences of what they are doing (*'la loi a interpellé les gens'; 'elle vient nous redresser'*). Before the introduction of Dodd-Frank, they argue, the militarization of the mining industry had reached shocking levels: there was a strong involvement of armed groups and members of the FARDC, and there were also a lot of uncontrolled mineral exports. Dodd-Frank is seen as part of an attempt to restore law and order in the mining business.[44] According to those who are in favor of Dodd-Frank, the law has been important in the context of the struggle against 'anti-values' (*anti-valeurs*).[45] In this latter respect, it is worth mentioning that the process of mining reform in eastern DRC has been coupled with the creation of a number of new Congolese monitoring mechanisms and institutions aimed at documenting, denouncing and/or combatting cases of fraud and abuse in the artisanal mining sector. The rationale behind these innovations has been to promote local ownership of mineral supply chain due diligence and to raise awareness among local stakeholders about the possibility and need to jointly create a stable, secure and transparent mining environment.

Box 1: Increased monitoring capacity at the Congolese level

- The ICGLR has established a whistle-blowing mechanism as part of its Regional Initiative against the Illegal Exploitation of Natural Resources (RINR). The aim of the mechanism is to '*capitalize on the knowledge of individuals witnessing or participating in illicit mineral activities*'.[46] The Congolese NGO Save Act Mine, which was founded in 2012 by a group of Goma-based traders and civil society representatives,[47], is expected to play a pivotal role in its implementation. Apart from organizing investigative missions in the mining areas in the interior, the organization has created 'fraud lines' (*numéros verts*) - numbers people can dial for free when they want to warn and/or inform the authorities about various abuses and illegal practices in the mining sector. In February 2013, Save Act Mine set up so-called local surveillance committees (*comités locaux de surveillance*), which, at the time of writing, are still in their pilot phase. The pilot sites are in Goma, Bukavu and Uvira.[48]

- The Bukavu-based NGO *Observatoire Gouvernance et Paix* (OGP) has created a new type of institution called the *Comités de Surveillance des Actes d'abus de droits de l'homme et de Corruption* (CSAC). These committees are operational in both North and South Kivu. The people involved in the CSAC have been trained in traceability issues. The CSAC can raise the alarm on a wide range of issues, for instance, on the existence of illegal roadblocks, armed incidents (and especially incidents involving guns), crimes (murders) etc…. The reports of CSAC are discussed during the monthly meetings of the provincial follow-up committees of North and South Kivu (cfr. infra).[49]

- At the provincial level, Congolese authorities have established so-called follow-up committees or *comités de suivi*. They are composed of representatives of the

relevant state services, civil society, BGR and MONUSCO. The presidency of the *comités de suivi* is assumed by the Provincial Ministry of Mines. The committee has to carry out regular assessments of the situation in the Congolese mining sector with regard to the implementation of the ICGLR's RINR mechanism and the OECD guidelines. Furthermore, it is charged with monitoring compliance with existing national and international legislation concerning child labor, women's presence in mining areas, and the ban on the involvement in mining activities of military actors, state agents, police, security agents and magistrates. The *comité de suivi* also has to keep an eye on mining operators' contribution to community development, and it is expected to play a mediating role in disputes and conflicts in the mining sector.[50]

- At the national level, the Congolese government has created the *Commission Nationale de la Lutte contre la Fraude Minière (CNLFM),* which is expected to work closely together with other services of the Ministry of Mines such as *the Direction des Investigations du Secrétariat Général des Mines*.[51] According to a recent progress report of the UN Secretary-General on MONUSCO, the CNLFM is plagued by a lack of resources and capacity.[52]

- The Congolese army has set up an internal monitoring mechanism. Since early 2011, South Kivu's 10th military region has a unit called *Direction de Production, Agriculture, Pêche, Elevage, Eaux et Fôrets*, which aims to identify and sanction army personnel involved in mining activities.[53]

Concerns about the lack of progress in upscaling mining reform initiatives

One of the key components of the mining reform process in the DRC has been the division of artisanal mining sites into different categories. Mining sites in the provinces of Katanga, North Kivu, South Kivu, Maniema and Orientale have received green, yellow or red labels depending on the degree to which the social and security conditions in and around the mines meet the standards set by the OECD and the ICGLR. According to Congolese law, only minerals originating from mines with a green label can be traded and exported. The Congolese Ministry of Mines sends out so-called Joint Assessment Teams (*équipes conjointes*), composed of representatives from the different institutions involved in the governance of the artisanal mining sector, to evaluate the situation in the different artisanal mining sites included in the mining reform process. Their assessments allow the Ministry to keep track of changes and to update the classification of mines.[54]

Both in North and South Kivu, artisanal miners, traders and managers of buying houses (*comptoirs*) are frustrated about the fact that budgetary constraints and security issues prevent the Joint Assessment Teams from doing regular field missions. Theoretically speaking, all mining areas in eastern DRC should receive a validation visit every three months. In reality, however, this rhythm has proved impossible to sustain. An additional complicating factor is that it usually takes several months before the findings and ratings of the Joint Assessment Teams are reviewed and approved by the Ministry of Mines at the national level. As a consequence, by the time the Minister of Mines issues a decree to announce the status of the various mines, the information gathered by the *équipes conjointes* is often already outdated.[55] As a result of the paucity and irregularity of visits by the *équipes conjointes*, large numbers of artisanal mines

continue to function in a sphere of illegality.[56] It is estimated that, so far, only 5-6 per cent of all the mining sites in eastern DRC have been covered by Joint Assessment Teams.[57]

Another constraint is the high cost of the validation process: the teams carrying out the assessments include representatives of many different parties (the Congolese authorities, Congolese civil society groups and companies, and international organizations such as MONUSCO and BGR), who are all are entitled to accommodation and daily allowances during their stay in the field. The three main funders of the *équipes conjointes* – USAID, BGR and the American NGO Pact – are expected to cover all these costs.[58] Uwe Naeher, the head of BGR's CTC project, told the authors of this report that, in his opinion, it was "not a sustainable solution on a long term basis having donors pay for something that should actually be paid for by the Congolese state."[59] These financial challenges are not always well understood by actors on the ground, who sometimes accuse (albeit off the record) the funding agencies of being stingy and even corrupt.[60]

Security equally constitutes a major impediment to speeding up the validation missions. In principle, the teams do not go to areas for which JMAC (Joint Mission Analysis Cell - the intelligence division of MONUSCO), gives a negative assessment.[61] Yet, even in cases where JMAC gives a green light, the missions can still face considerable security challenges. Sources in Goma told the authors of this paper that the North Kivu's Joint Assessment Team has made several unsuccessful attempts to visit Bisie (the most important tin mine in the region, located in the territory of Walikale[62]) because certain armed groups have been causing a series of incidents in the mining area with the purpose of preventing the *équipe conjointe* from doing its job. The militia most frequently cited in this respect is the Nduma Defense of Congo (NDC) group led by Ntabo Ntaberizi Sheka,[63] a well-known figure in the local mining business who is currently negotiating his reintegration.[64] Also elsewhere, the North Kivu Joint Assessment Team has had trouble operating. One member of the *équipe conjointe* informed us that he had received serious personal threats during a visit to the Rubaya area, presumably because he was considered too nosy by some of the local mining operators.[65]

Some of our informants also expressed regret that, in their view, the Itsci scheme has been dominating the traceability processes in the Great Lakes Region, this to the disadvantage or neglect of other initiatives such as those developed by the British company Geotraceability or the South African company Met Trak. Congolese mineral producers and traders feel that have not really been given the opportunity to acquaint themselves with the variety of different tracking and tracing tools. Instead, they argue, mining operators in the DRC have had no other option than to market their minerals through the Itsci system as this appeared to be the only way to make them acceptable to Western consumers. Those who have been in the unfortunate position of working in places that are not covered—or even taken into consideration—by the Itsci system have found themselves cut off from a considerable part of the international market.

At the time of writing, the Itsci system is only present and truly operational in a limited number of mining areas in the Great Lakes Region, namely in Rwanda and in the Congolese provinces of Katanga, South Kivu and Maniema. In North Kivu, Itsci's arrival is very recent (March 2014). In the opinion of the critics of the Itsci system, the situation would be a lot healthier if multiple systems of traceability would be given the chance to coexist, all enjoying equal confidence and acceptance among end-users of

Congolese minerals. They are convinced that this would help to reduce the heavy reliance on one single provider of transparency, and they also believe it would facilitate the access of Congolese minerals to the international market.[66] The disadvantage of such approach, however, is it would lead to the co-existence of too many different schemes, each having their own methodologies and requirements.[67] Also, Itsci's involvement in the two most conflict-affected provinces of eastern DRC, North and South Kivu, has been extremely limited until now. Only a very small portion of the artisanal mining population in these places has been able to sell its minerals under Itsci's bagging and tagging system.

The slowness characterizing the activities of the Joint Assessment Teams and the implementation of the Itsci system contrasts sharply with the hasty manner in which the ICGLR certificate has been launched (even if it took a very long time in preparing and developing the certificate). On 12 January 2014, the General Director of the CEEC and his deputy sent a letter to the governors of Katanga, North Kivu, South Kivu, Maniema, the Orientale Province and Kinshasa to inform them of the decision of the National Minister of Mines to bring the ICGLR certificate into circulation throughout the entire Congolese territory on 20 January 2014, and to abolish—from the appointed day onwards—the existing (Congolese) system of certificates of origin (*certificats d'origine*).[68] This meant that the mining authorities in eastern DRC were given hardly one week to bring the news to the different groups of stakeholders on the ground and make the necessary arrangements.

Three factors help to account for the hasty introduction of the ICGLR certificate.[69] First of all, the Congolese authorities were already several months behind schedule. On 6 June 2013, the CEEC officially had received the first batch of 100,000 ICGLR certificates, which had been printed with financial support of PROMINES (*Projet d'Appui au Secteur Minier*).[70] On that occasion, the Congolese Ministry of Mines had promised to issue the first certificate in the course of July 2013 and to make sure that the certification system was fully operational by the end of September 2013.[71] Second, Rwanda had already started issuing certificates for minerals exploited on its territory a couple of months earlier. Having integrated the ICGLR Regional Mineral Certification Mechanism into its legal framework in April 2012, the Rwandan government proudly presented the first certificate on 5 November 2013, for a shipment of minerals originating from the Rutongo Tin Mines in the Ruhongo District.[72] Finally, from 10-15 January 2014, the Angolan capital of Luanda hosted the 5th Ordinary Summit of the Heads of State and Government of the ICGLR.[73] In other words, the Kinshasa government was under a lot of pressure to act quickly in order to avoid losing face with its donors and the international business community.

The unexpected announcement of the launch of the ICGLR certificate had disastrous consequences for mining operators on the ground. First of all, the number of green-labeled mines was far too low for the system to be able to work in a comprehensive manner. As one Congolese public servant stated in an interview with the authors of this paper, the decision to introduce the ICGLR certificate was a classic example of '*putting the cart before the horse*'.[74] South Kivu harbors approximately 900 mine sites, but, at the time of the launch, only the site of Kalimbi near Nyabibwe met the necessary conditions to be included in the regional certification system.[75] A similar situation could be observed in North Kivu.[76] Although, on 23 March 2012, the National Minister of Mines had issued a decree to grant a green status to 11 mine sites in the Rubaya mining area, it took almost two years (until February 2014) before these same sites received a new, confirmatory visit from a Joint Assessment Team. Consequently, at

the time of the announcement of the ICGLR certificate, there was not a single mine site in North Kivu where the system could start functioning.

Actors at the grassroots level are very well aware that these realities are due to the lack of validation missions by the Joint Assessment Teams. Already in June 2013, more than 6 months before the introduction of the ICGLR certificate, the Walikale-based organization ADECADEWA (*Association pour Défendre les droits des entités coutumières et des autochtones pour le Développement Endogène de Walikale*) wrote a letter to the national representative of BGR in Kinshasa, expressing its concerns:

> Our greatest wish is to welcome the Joint Assessment Teams with open arms so that they can validate the mine sites. We guarantee them safety and tranquility in the exercise of their task, which is very beneficial to our socio-economic interests. The population of Wassa, which has already acquainted itself with the process of due diligence of the OECD thanks to the sensitization efforts of Save Act Mine, also wants this assessment to take place as soon as possible, before the deadline of the launch of the ICGLR certificate in the DRC. If this does not happen on time, the minerals produced in this *groupement* will escape the official circuit through fraud and smuggling, which will lead to a loss of revenue for the population, for the province of North Kivu, and for the entire DRC.[77]

Even though the author of this letter is probably too optimistic about the security conditions in and around the Bisie tin mine, he correctly points at the need to speed up the process of validating eastern DRC's artisanal mines. If the Congolese government and its donors are serious about formalizing the artisanal mining sector and putting an end to the illicit trafficking of minerals, they need to make sure that due diligence initiatives are implemented on a much wider scale than is currently the case.

Rising tensions between ASM and industrial mining

A third trend that has been reinforced by the introduction of Dodd-Frank is the rising tension between ASM and industrial mining. Artisanal miners are suspicious of the trend towards formalization, which they see as an attempt by the Congolese state to strengthen their grip on the artisanal mining sector and which they also consider a precursor of a gradual transition to industrial mining. The suspicion of the artisanal mining population is fuelled by the fact that, since the introduction of the Congolese mining code in 2002, foreign mining companies have been acquiring a large number of mining rights in several parts of (eastern) DRC. In the process of distributing exploration and exploitation permits, the Congolese authorities have paid little or no attention to the presence of artisanal miners in the mining areas. This is leading to growing conflict, as more and more artisanal miners find themselves evicted from their working places, often in violent ways and without any form of compensation.

There is a widespread concern and anxiety among the artisanal mining population that the hidden agenda of the Kinshasa government is to encourage the entry of more and more private mining companies into the Congolese mining sector to the detriment of the livelihoods of artisanal miners and others depending on ASM for their survival. Due to the lack of alternative livelihoods and as a result of the difficulties with saving money and getting access to credit facilities, artisanal miners often find themselves increasingly in a very vulnerable position. Afraid of loosing their only source of revenue, they turn to mining cooperatives or–worse–to armed groups for support in their struggle against private mining companies.

A first example that illustrates the growing tension between ASM and industrial mining in the Kivus concerns the Bisie tin mine in the territory of Walikale. In September 2006, Mining and Processing Congo (MPC), at that time a subsidiary of the Mauritius-registered Kivu Resources, obtained an exploration permit for the Bisie mine. In December of the same year, the company made an agreement with local customary chiefs, committing to provide various services to local communities and to generate revenues for the local administration in the course of its mining project.[78] In 2012, MPC sold all its shares to Alphamin Resources, a Canada-based mineral exploration company listed on the Toronto Venture Exchange.[79] Through MPC, Alphamin currently has full legal title over five exploration permits covering a surface of 1470 km2. So far, the company has completed two drilling programs, the first between June and December 2012 and the second in August 2013.[80]

On several occasions, the artisanal mining population has organized strikes and demonstrations against MPC. For its part, MPC has tried to silence the protests by signing agreements with local mining cooperatives COMIMPA (*Coopérative Minière de M'Pama-Bisie*), COCABI (*Coopérative Minière et de Développement pour la Réconstruction*) and ADECADEWA. What angers the mining population and the local community is that MPC has failed to keep its promises and has not respected the agreements with the mining cooperatives.[81]

Artisanal miners interviewed in 2013 by the *Commission Episcopale pour les Ressources Naturelles* (CERN) in Ndjingala accused the NDC militia led by Sheka of being in cahoots with MPC and helping the company to prevent *creuseurs* from entering the mine.[82] Meanwhile, at the time of writing, the newly arrived Alphamin Resources has difficulties convincing the local population of its good intentions as continues to run its exploration project through MPC.[83]

A second illustration of the antagonism between private mining companies and artisanal miners can be found in the Rubaya area in North Kivu's Masisi territory. The two parties involved in this dispute are the company MHI (Mwangachuchu Hizi International) of Senator Edouard Mwangachuchu, and the mining cooperative COOPERAMMA of the provincial MP Robert Seninga Habinshuti. Although MHI holds an exploitation permit from the Congolese mining cadaster (CAMI), which was granted on 11 August 2006 and which covers 36 *carrés miniers* (ca. 25km2),[84] members of COOPERAMMA have been claiming the right to continue operating in the area covered by the permit. In fact, in April 2012, a mining consultant working as an independent auditor for the Congolese Ministry of Mines and BGR stated in a report that, of all the mining sites covered by the mining title, "only Bibatama is currently operated directly under the company MHI. All the other mining sites," he added, "are currently without formal relations to the company, according to the mining code 'illicitly' operated and exploited by diggers (…) affiliated to COOPERAMMA."[85]

MHI's presence is not only distrusted because of its (perceived) threat to local livelihoods. There is also evidence that, at least on one occasion, the company received assistance from the local administration to forcibly mobilize labor for road construction works. In early February 2013, the local *chef de poste* organized a *salongo* to work on the road Rubaya-MHI, giving tokens to everyone who took part in this round of community labor. Those who did not participate—and therefore did not receive a token—were obliged to pay a fine to the local administration. When, on 11 February 2013, a crowd of

artisanal miners and transporters held a protest March against this initiative of the *chef de poste*, FARDC soldiers opened fire to disperse them, killing two people.[86]

There are persistent rumors that, in the period before November 2013, Seninga received support from the Nyatura militia, while Mwangachuchu was allegedly backed by certain officers in the FARDC.[87] Seninga is a prominent member of North Kivu's Hutu elite. In the 1993 Masisi war, he was the vice-president of the *Combattants Hutu*, a local defense group. In 1998, he was co-opted by the Rwandan government, and, later on, he became a key figure in the inner circle of Eugene Serufuli, the then governor of North Kivu. According to a recent report of the Rift Valley Institute, Seninga "has continued to use his influence – particularly in Southern Masisi, his home base – to alternate between rallying troops and brokering peace."[88] For his part, Mwangachuchu is a former cattle rancher, who fell victim to anti-Tutsi violence in 1995 and obtained political asylum in the US in 1996. In 1998, he moved back to the DRC. In 2001, he obtained an exploitation permit for the Bibatama mine. Prior to September 2010, Mwangachuchu exported the coltan mined in Bibatama through his own Goma-based comptoir MHI. Mwangachuchu's relationship with armed groups in Masisi is not really clear. Nevertheless, according to a report of the UN Panel of Experts that was released in June 2012, Mwangachuchu "paid at least 5000 US$ to both General (Bosco) Ntaganda and Colonel (Baudouin) Ngaruye, in exchange for military assistance for his (electoral) campaign' in Masisi in 2011."[89]

For several years, COOPERAMMA avoided direct negotiations with MHI and tried to strengthen its position in the dispute by obtaining formal recognition as a mining cooperative from the Ministry of Mines in Kinshasa.[90] It was not until November 2013 that the provincial follow-up committee of North Kivu (*comité de suivi*) succeeded in persuading the two parties to find a peaceful solution to their dispute and to reach an agreement about their joint presence in the Rubaya area. According to the terms of the agreement, members of COOPERAMMA are allowed to continue working in the area covered by MHI's exploitation permit, but only if they sell all their minerals to the company. In case MHI is only capable or prepared to buy part of the mineral production offered by COOPERAMMA, the members of the mining cooperative are free to sell the remainder elsewhere. In addition to this, the two parties have committed themselves to respecting international environmental and mineral traceability standards, and to assist the Congolese mining police in guaranteeing security in the area covered by MHI's exploitation permit. The agreement also stipulates that the two parties will safeguard the protection of human rights and will promote the peaceful coexistence of the different communities in the Rubaya area.[91]

Finally, a third illustration of the tension between ASM and industrial mining can be found in the gold mining area of Misisi, situated in the territory of Fizi in South Kivu. Here, the presence of the gold exploration company CASA Mining Ltd has been causing a lot of controversy. CASA was formed in early 2009 and is registered in the British Virgin Islands. According to the information presented on its website, CASA's exploration activities in Misisi are made possible through an option agreement with Anvil Mining Ltd, whose subsidiary Leda Mining Congo holds exploration permits for the mining blocks 818, 819, 820, 821, 822 and 823.[92]

The ASM population of Misisi has developed several strategies of resistance against CASA. First of all, on 4 February 2014, thirteen participants in Misisi's artisanal mining business (mostly pit owners and *négociants*) sent a petition to Marcellin Cishambo, the governor of South Kivu, to denounce illegal taxation by public

authorities, to criticize the high level of insecurity in the area, and to express their profound dissatisfaction with the arrival of CASA Mining Ltd, which they accused of starting its project without consulting or notifying the local population. The signatories of the petition were all members of a local organization called *Solidarité des Jeunes pour le Développement de Kimbi* (SOJDK).[93]

A second—and a lot more worrisome—strategy of resistance has been the plan to start collaborating with members of the Mai Mai Yakutumba, an armed group that has been operating in Misisi since 2007 and that has reportedly been planning to violently combat the presence of CASA Mining in Misisi. From the moment of its creation, Mai Mai Yakutumba has been deriving a substantial part of its revenues from taxation and trade in gold from the mining areas of Misisi and Mukera.[94] In 2011, the UN Panel of Experts reported that Katambo, the locality chief of Misisi and a known supporter of Yakutumba, collected "contributions for the rebels from other miners and traders totaling up to 200 grammes of gold per month."[95] Following the failed integration of Mai Mai Yakutumba into the national army, part of the group returned to their old strongholds (Ngalula, Nyange and Lubichaku), while others reportedly became active in ASM. At the time of writing, there are disturbing reports about targeted attacks on buses and motorbikes along the main road between Misisi and Kalemie, which are believed to be motivated by the ambition to extort gold from traders traveling via this route. Some of our sources also told us that several factions of Mai Mai Yakutumba (Abwe Mapigano in Ngandja; Kachoka, Misunga and Captain Kibukila in Mukera) are controlling gold mining locations in South Fizi.[96]

Julius Mulya, who works as a community consultant for CASA, does not believe that the company is currently being threatened by Mai Mai Yakutumba in South Kivu. In a recent interview, he explained that people at the local level – and even members of the mining administration – often do not know the difference between exploration and mining, which, in his opinion, may help to explain why CASA's activities are sometimes misunderstood or perceived negatively. While Mulya acknowledged that some artisanal miners might consider CASA's presence in Misisi as a threat, he emphasized that Leda (CASA's partner) obtained the mining concession legally and that efforts had been made to inform the local chieftaincy of the company's plans in the future. CASA, he added, does pay attention to the interests of artisanal miners in Misisi: apart from allowing them to continue working on the concession, it also avoids drilling in areas where the diggers are at work.[97]

Shifting trade patterns

Before September 2010, two thirds of North Kivu's export revenues were generated by the export of minerals.[98] Statistics on the export of minerals in North Kivu between 2008 and 2012 show a clear downward trend after the introduction of Dodd-Frank yet these declining official export figures only show part of reality. Several more general trends can be observed, which are instigated by the growing international attention to the assumed links between eastern Congo's mining industry and armed actors, and by the different policy responses:

First of all, in course of the past five years, three of the most important international buyers of minerals from eastern DRC have announced their temporary withdrawal from the region, thereby causing serious problems for their Congolese suppliers, who saw their long-term contracts interrupted and/or had serious difficulties getting their remaining stocks sold on the international market.

In May 2009, the Luxemburg-registered Traxys pulled out. This happened after the publication of a UN report in 2008, which accused the trader of working together with and pre-financing buying houses sourcing minerals from FDLR-controlled mines.[99] Then, in September of the same year, the fifth-largest tin producer in the world, the Thailand-based tin smelter Thaisarco (Thailand Smelting and Refining Company), a subsidiary of the Amalgamated Metals Corporation,[100] followed Traxys' example. The chairman of Thaisarco explained the company's decision by stating that "negative campaigning from advocacy groups and adverse coverage in sections of the international media" was undermining efforts of the industry to clean up the Congolese tin trade.[101] Finally, and perhaps most importantly, the Malaysia Smelting Corporation, the third biggest tin producer in the world, also pulled out in early 2010. Before Kabila's mining ban came into force, MSC purchased up to 80 per cent of all tin ores exported from eastern DRC. Shortly before the ban was lifted, MSC announced it would stop buying Congolese minerals because it was unable to guarantee that all of these minerals would be tagged under the Itsci system, as requested by the Electronics Industry Citizenship Coalition.[102]

In the case of Traxys and MSC, the decision to leave the DRC was not final. Traxys returned a couple of years later and was, in fact, the first company purchasing minerals from Nyabibwe's Kalimbi mine with an ICGLR certificate, in February 2014. As for MSC, according to information on its website, the company currently sources between 15 and 20 percent of its tin production from artisanal mines in Central Africa. The company further states that most of the smelter intake comes from Rwanda and Southern Katanga, and that all purchases of tin concentrates from Rwanda and Katanga are done through Itsci.[103]

A second trend is that Asian buyers have gradually taken over the market, while many of the *comptoirs* that used to be major exporters of 3T minerals in the period before Dodd-Frank were forced to close their businesses or move to other Congolese provinces or one of the neighboring countries. In Goma, the number of exporters went down from twenty-five to three in 2011. The only three *comptoirs* that continued functioning were Chinese-owned: Huaying, TTT Mining and Donson International.[104] This was obviously due to the fact that the latter were not unaffected by Dodd-Frank. Taking advantage of the fact that large quantities of Congolese minerals threatened to remain unsold, Chinese companies started buying them at very low prices.[105] For a moment, it looked as if the dominance of Chinese buyers on the Kivutian mineral market was going to be short-lived. On 15 May 2012, the Ministry of Mines suspended the activities of CMM and Huaying, because they had failed to respect the *note circulaire* on due diligence of 6 September 2011 (in which it was stated that mining operators were obliged to respect the due diligence guidelines of the UN and the OECD).[106] Yet, at the time of writing, the large majority of cassiterite and coltan ores exported by Goma-based *comptoirs* are once again destined for the Asian market. The three most important coltan exporters are MHI, AMR/Mugote and MHI, while the three most important cassiterite exporters are Huaying, CMM and AMR/Mugote.[107]

Several of the other *comptoirs* in North and South Kivu also decided to close or relocate their business activities to places where the mining reform initiatives were already up and running, hoping that this would increase their chances of safeguarding or restoring their business relations with Western clients. The case of the Bukavu-based Panju-*comptoir* illustrates this trend. Panju started in the import-export business, switched to the gold trade during the days of the RCD rebellion and became an exporter

of cassiterite and tantalite in 2005. In 2008, the Panju *comptoir* was the second biggest exporter of cassiterite in the Kivus, after the Goma-registered Sodexmines.[108] When Kabila announced the suspension of all mining activities in eastern DRC, Panju tried to open offices in Katanga, but, like many others, he was confronted with various administrative constraints and financial requirements at the provincial level.[109] In the end, he decided to close his business altogether. Another example is Clepad (*Clemence Patrick Dealing Sprl*), founded in 2007. During the mining embargo imposed by President Kabila, the Clepad management decided to temporarily close its office in Goma and open a second office in Lubumbashi in October 2010. Since 1 April 2011, Clepad has stopped exporting minerals from North and South Kivu, and has decided to concentrate on its activities in Katanga, showing a strong commitment to due diligence initiatives such as Itsci.[110]

A third trend since the introduction of Dodd-Frank is that some of the international buyers of minerals from the Great Lakes region who used to also source minerals from DRC, have decided to engage in semi-mechanized or industrial mining in Rwanda, which is generally considered a more stable and secure business environment. The Rwandan mining sector has been booming in the past few years. Between 2008 and 2012, Rwanda's mineral exports grew at a rate of 44 per cent per year.[111] Whereas, in 2005, revenue from Rwanda's mining sector amounted to 38 million US$, by 2012, this figure had reached 138 million US$. In the same year, ore exports accounted for 47.5% of all of the country's foreign sales.[112] Another factor is that, in Rwanda, international businessmen run a far lower risk of incurring reputational damage as a result of naming and shaming campaigns. A good example of this is the followed strategy of the company Minerals Supply Africa (MSA). Founded in 2008, MSA became a fully-owned subsidiary of Cronimet Central Africa in mid-2009. Before the Kabila mining ban, it used to be one of the largest buyers and processors of minerals from eastern DRC: in 2010, it was the exclusive buyer of nine *comptoirs* in North Kivu and one *comptoir* in South Kivu.[113] After the ban was lifted, MSA decided to limit itself to buying operations in Rwanda.

A fourth trend that can be distinguished since Dodd-Frank is a move towards the processing of Congolese minerals on Congolese soil. Despite the fact that Masisi continues to be the scene of armed groups and high levels of instability, the African Smelting Group (ASG), a company with offices in Goma and Kyrgyzstan, has taken the risk to build a tin smelter in Sake. ASG has joined Itsci and has also promised to follow the OECD guidelines.[114] In Katanga, MMR built a tin smelter on the outskirts of Lubumbashi, with financial help of the Malaysia Smelting Corporation.[115]

Finally, in several mines in eastern DRC, there has been a tendency to set up so-called 'closed pipelines', which are made up of a predefined set of partnerships between *creuseurs, négociants, comptoirs* and even smelters in Asia and capacitor and electronics manufacturers from all over the world. Closed pipelines offer the advantage that the risk of contamination (i.e. 'dirty' minerals entering clean supply chains) is very low and that end-users have a secure access to minerals originating from mine sites officially recognized as conflict-free by the Congolese authorities. Examples of closed pipelines include the Solutions for Hope pipeline, which was launched in July 2011, and the Partnership for Social and Economic Sustainability, which was initiated in early 2012.

The unintended side-effects of formalization

Policymakers at the international level tend to believe that the creation of mining cooperatives is of vital importance, because, theoretically speaking, it can help *creuseurs*

and *négociants*, two groups of actors at the bottom end of the mineral commodity chain, to defend their interests vis-à-vis more powerful players in the mining business, such as buying houses, public services and private mining companies. In reality, however, few mining cooperatives in eastern DRC have genuinely served this purpose. Instead, mining cooperatives have often been instrumentalized by local strongmen seeking to gather a group of loyal supporters around them who respect their authority and who are prepared to defend their business interests in and around the mines. A good example of this is the situation in Nyabibwe, where the COOMBECKA and COMIKA cooperatives have, for several years, been disputing the right to exploit the Kalimbi mine. In July 2010, this even led to a violent clash, which left one person dead and seventeen others wounded.

Another unintended side-effect of the move towards formalization of the artisanal mining sector in eastern DRC has been the emergence of buying monopolies at the local level. Only *comptoirs* meeting the standards of the Itsci traceability scheme have been able to get their minerals sold to Western end-users in the 3T industry, and this has given them the power to unilaterally impose certain conditions on their suppliers. A first example is that of the World Mining Company (WMC) of Edouard Kitambala. WMC is a leading exporter of cassiterite, coltan and wolframite with offices in Bukavu, Goma and Butembo.[116] When in October 2012, the Itsci scheme became operational in the Kalimbi mine near Nyabibwe, WMC was the only *comptoir* with an Itsci membership and thus the only one authorized to buy labeled minerals. According to *négociants* and *creuseurs* in Nyabibwe, this made WMC being able to force a fixed price (per kg) upon its suppliers. The situation started improving since October 2013, when the *comptoirs* Bakulikira and Rica opened their doors and started buying labeled minerals as well, thus obtaining the status of processing entities (*entités de traitement*). As a result of the end of the WMC monopoly, mineral prices in Nyabibwe started to increase.[117]

In Katanga, a similar situation occurred. The company Mining Mineral Resources (MMR),[118] established in 2008, has grown into the most important and dominant buyer of 3T minerals on the Katangese market. Until the end of August 2011,[119] it was the only Katanga-based company authorized by the provincial authorities to export minerals. At the time of writing, MMR holds 36 exploration permits, most of which are in Katanga.[120] In addition to this, the company has concluded joint venture agreements with Gécamines, Cominière and TSM, and it has also signed a contract with the Katangese Ministry of Mines in March 2010, thanks to which it now has exclusive access to four artisanal mining sites in Katanga's Tanganyika District (Kisengo, Lunga, Mai Baridi and Katonge).[121]

Through the provision of upfront funds to Itsci at the start of the project, MMR has played a key role in its implementation in Northern Katanga. Normally speaking, the costs of the Itsci scheme are covered through the so-called "supply chain levy." Every mineral exporter is expected to pay a certain charge per ton of exported minerals and this money is then used to keep the system going. Because such funds are normally only available four to five months after the mining of the ores (when metals are sold on the international market), there was a risk that Itsci would be faced with a cash flow problem in the early stages of its activities in Katanga. MMR's help made it possible for Itsci to overcome such difficulties. To avoid creating the impression that MMR would receive special benefits as a result of its generosity, ITRI made it clear in the financing agreement with the company that "ITRI will remain neutral in the operation of the system and will provide no specific commercial or competitive advantage to MMR."[122]

Yet, Itsci has not been the only party receiving financial support from MMR. In February 2010, MMR signed a contract with the *Police Nationale Congolaise*, which stipulated that the company had to pay each officer of the *Police des Mines* a fixed amount of money per month. Moreover, at least until July 2011, the company also pre-financed the salaries of the aforesaid police officers when the state authorities were late in paying them.[123] The same thing has happened with SAESSCAM: MMR is paying these agents 100 US$ per month.[124] The relationship between MMR and the mining cooperative CDMC (*Coopérative Minière du Congo*) is also shaped by financial arrangements. In theory, one would expect CDMC to defend the interests of its members —the *creuseurs* and *négociants* working in and around the abovementioned 3T mines in North Katanga—in their dealings with MMR. In reality, MMR pre-finances the CDMC *négociants* and obliges them to sell all their minerals exclusively to the company.

In Kisengo, MMR and CDMC have been buying coltan at a fixed price at the so-called buying points or *postes d'achat*, despite significant price fluctuations at the international level. This has not only led to protests on the part of the *creuseurs* and the *négociants,* but also to the emergence of smuggling practices. In this context, it is worth mentioning the phenomenon of the '*hibous*' ('owls'). The *hibous* are a group of *négociants* who organize the illicit trafficking of coltan from Kisengo to other trade centers such as Kalemie and Uvira. They do not operate on their own but have built up a network of local collaborators who keep each other informed about the evolution of coltan prices and about each other's movements and activities. The *hibous* offer Kisengo-based *creuseurs* and *négociants* the possibility to evade the price monopoly of MMR/CDMC, as they offer them better prices for their minerals.[125]

Political developments since the introduction of the Dodd-Frank Act

Reconfiguration of previously existing initiatives

All of the current initiatives (see previous sections) that have entered the stage of implementation can trace their intellectual origins in the earlier emanations of the conflict minerals debate. The critical impact of the Dodd-Frank Act has been to underscore the importance of their initiatives by obligating companies to conduct due diligence on their mineral supply chains. Individuals involved in the design and implementation of some of these initiatives, have been unanimous in their assessment that immediately after the Dodd-Frank Act's Section 1502 became reality, industry interest in joining existing initiatives spiked. Within the ICGLR, which had just started considering the technicalities of setting up its own certification system, the passing of the Dodd-Frank Act gave it a final push: "the minute the Dodd-Frank Act became a reality, everybody became much more serious."[126]

However, the extended period of time that passed between the approval of the Act by the US Congress on the one hand, and the promulgation of more specific regulations by the Securities and Exchange Commission on the other hand, has resulted in a great deal of uncertainty about future legal requirements: industry actors knew they needed to comply with legislation that had not yet been properly clarified. It was therefore difficult for some of the existing initiatives to adapt, since they did not yet know if any significant changes will be needed to be made on their projects, in order for their materials to be accepted as conflict-free under the Dodd-Frank Act. Some industry stakeholders interviewed have confirmed their hedging behavior in this period, whereby they were trying to align their already existing initiatives as closely as possible to what

they thought was the level of assurances the Dodd-Frank Act might legally require. The chances of survival for any initiative, whose participants could not be guaranteed an effortless compliance with the Dodd-Frank Act, were expected to be rather limited. However, the emphasis on a clear-cut yes/no response to the question of whether or not a company's supply chain is conflict-free, has been detrimental to the development of more gradualist and nuanced approaches to responsible sourcing of DRC minerals. The Dodd-Frank rules as they are being developed thus tend to encourage disengagement from the wider Great Lakes region.

Proposed European Union Conflict Minerals Legislation

Following the passage of Section 1502 of the Dodd Frank Act, conflict minerals campaigners urged other jurisdictions to "follow the lead of the US."[127] According to this perspective, the passing of the Dodd Frank Act was a major act of leadership from the part of the US, one that should be emulated by all parties interested in a peaceful solution to the long-lasting Congo conflict. The European Union (EU) and its member states in particular, should be the next major stakeholder to follow suit.

Already on 7 October 2010, the European Parliament first passed a resolution calling for the EU to legislate along the lines of the US conflict minerals legislation. Since then, the European Commission has communicated its intent to explore ways of improving mineral supply chains.[128] The Commission, through its Directorate-General for Trade, carried out a public consultation on a possible EU conflict minerals initiative in 2013, as well as an assessment of the compliance costs associated with such an initiative.[129]

A legislative proposal was publicly presented by the Commission on 5 March 2014. With this proposal, the Commission aims to break the links between the extraction and trade of minerals and the financing of armed conflict, while creating a market within the EU for responsibly traced minerals originating from conflict regions, and improving the ability of EU operators to comply with due diligence frameworks. The proposal, centered on the voluntary self-certification of industry stakeholders wishing to become recognized as "responsible importers of minerals or metals containing or consisting of tin, tantalum, tungsten and gold"[130], was met with strong criticism from conflict minerals campaigners. Activists warned that the proposed legislation will not keep conflict resources out of Europe. Their critique was directed against the voluntary nature of the measure, as well as the fact that it only aims to cover processed and unprocessed minerals imported into the EU, unlike the much broader reach of the US legislation.[131]

Criticism also came from Members of the European Parliament. A report from the Parliament's Committee on Development on "promoting development through responsible business practices, including the role of extractive industries in developing countries," was adopted by the Plenary sitting of the European Parliament. Unlike the proposal that was at that time being finalized by the Commission, the Parliamentary report demanded a strong and binding measure that applies to every segment of the supply chain and, in a notable departure from the Congo-centered focus of the Commission's proposal and the US Dodd-Frank example, to all natural resources produced in any conflict-affected or high-risk area. Furthermore, such legislation needed to be comparable with (but at the same time going beyond) the obligations under the US Dodd-Frank Act, so that fulfilling EU obligations would automatically result in compliance with US legislation. Finally, the European Parliament's report envisioned a

proposed legislation as being embedded in a wider approach to address the root causes of conflict and state fragility, and complemented by appropriate development aid programmes. [132] In public consultative meetings, members of the Committee on Development acknowledged that, in their views, the Dodd-Frank Act and associated hedging behavior by international traders had resulted in some negative impacts on local livelihoods, and stressed that any EU legislation would go beyond a simple due diligence effort, but instead be embedded in a wider strategy aimed at mitigating any negative impacts on local livelihoods.

General conclusions

This paper has pointed at a number of recent dynamics in Congo's artisanal mining sector, some of which can be attributed to the introduction of the Dodd-Frank act. Our testimonies collected on people's experiences during and after the Kabila embargo, which is believed to be direct consequence of Dodd-Frank, seem to confirm earlier systematic research. The embargo had a paralyzing effect on the regional economy and has drastically reduced people's livelihood options. Even if Dodd-Frank for many stakeholders has been a wake-up call, has generated increased awareness of the urgent need to address a number of negative traits of the mining industry, including the high level of militarization, corruption and exploitation of women and children, and has sped up the mining reform process, little real progress has been made on the ground. Living conditions of miners have not improved, the sector is still highly militarized, and a multitude of exploitative networks still control large parts of it.

Although several conflict mineral initiatives have now moved beyond the pilot and testing stages, large-scale implementation of these initiatives remains fraught with difficulties. Serious issues exist with regard to the upscaling of these initiatives towards covering a majority of mining sites in North and South Kivu. There is also a lack of coordination between different initiatives; although harmonization is rightly targeted as an urgent need by many stakeholders, it needs to be encouraged and strengthened, activities need to be coordinated, resources and data be shared and joint efforts be developed for a more transparent mining sector in the DRC, rather than focusing on small islands of transparency.

Conflict mineral initiatives should strive towards a more global approach. The current all-or-nothing approach, exemplified by the Dodd-Frank-mandated necessity to state whether a company is 'DRC conflict-free' or not, not only encourages disengagement, but also makes the upscaling of existing initiatives a difficult and expensive undertaking. Adopting a more gradualist, process-based approach towards reforming the Congolese mining sector should make upscaling more feasible, while countering the growing tendency of disengagement.

As was observed during our fieldwork, there is a growing sense of emergent conflict between artisanal miners and large-scale mining interests. Outside observers, who are easily seduced by the appealing assumption that the introduction of large-scale mining in the Kivu's will yield greater resources for the Congolese treasury (through the comparatively easy process of taxation as well as increased mineral extraction capacity), should keep in mind the spotty track record of large-scale mining in Central Africa and the DRC in particular, as well as the fact that artisanal mining rents are often directly integrated in local economies. Despite the negative aspects associated with them, artisanal mines do represent a massive employment sector.

Many of the current initiatives also remain largely Western-inspired, Western-led, and audited by mostly Western firms and expat consultants. This leads to a lack of ownership of most Congolese stakeholders. In addition, in their implementation, many of the initiatives are vulnerable to elite capture. This is particularly the case when 'cooperatives' are supported. These cooperatives are often seen as structures expressing the interests of miners, but in reality serve the interests of local strongmen. Efforts should be made to involve Congolese actors in planning, implementing and evaluating initiatives in order to increase local ownership and to prevent strengthening processes of state weakening to the advantage of local strongmen.

Finally, policymakers should reassess and reorient their focus from a narrow conflict minerals perspective to a more nuanced and empirically grounded analysis of the Congo conflict. Such an analysis will continue to emphasize mining reform in the DRC, but as an engine for growth and development rather than as a potential fuelling mechanism for violence and war. Mining reform should become a more inclusive and gradual process: the reform of Congo's mining sector is a necessary endeavor, but one that should be more closely integrated with broader security and development concerns. Ultimately, it is a process that should bring far bigger benefits to the Congolese people than the attempts we have seen thus far.

---

[1] For a detailed discussion of this, see Autesserre, S., 2012. Dangerous tales: Dominant narratives on the Congo and their unintended consequences. *African Affairs*, 111(443), pp. 202–222.

[2] Dangerous tales: Dominant narratives on the Congo and their unintended consequences. Autesserre, S. (2012). *African Affairs*, 111(443), pp.202–222.

[3] United Nations, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, 2 April 2001, §211.

[4] Beyond 'Conflict Minerals': The Congo's Resource Curse Lives On. Kinniburgh, Colin (2014) *Dissent*, Spring 2014, p. 64.

[5] *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. Second Edition.* OECD (2013) Paris, OECD Publishing.

[6] *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. Second Edition.* OECD (2013) Paris, OECD Publishing *p.16.*

[7] *Mineral Supply Chain Due Diligence Audits and Risk Assesments in the Great Lakes Region. Analysis Report.* Levin, Estelle & Cook, Rupert (2013). BGR/ICGLR, p.38

[8] *Coltan*. Nest, M. (2011). Polity, p. 104.

[9] *Coltan*. Nest, M. (2011). Polity p.12.

[10] *Coltan*. Nest, M. (2011). Polity pp. 17-18.

[11] *What's wrong with Dodd-Frank 1502? Conflict minerals, civilian livelihoods, and the unintended consequences of western advocacy*. Seay, L. (2012). Center for Global Development Working Paper (284), p.9.

[12] https://www.youtube.com/watch?v=aF-sJgcoY20&list=PLC7CC1FCADB2D496C
[13] http://www.raisehopeforcongo.org/content/conflict-free-cities
[14] http://www.raisehopeforcongo.org/content/conflict-free-campus-initiative
[15] http://campus2congo.snappages.com
[16] .Conflict Minerals Legislation: The SEC's New Role as Diplomatic and Humanitarian Watchdog. Woody, K.E. (2012). *Fordham Law Review*, 81, p. 1325.
[17] Conflict Minerals and SEC Disclosure Regulation. Taylor, C. (2012). *Harvard Business Law Review Online,* 2, p. 108.
[18]. *S.891. Congo Conflict Minerals Act of 2009.* 111th Congress, 1st Session. US Senate (2009), April 23, 2009.
[19] Personal communication with Ben Radley, director of *Obama's Law*, 9 May 2014.
[20] Conflict Minerals and SEC Disclosure Regulation. Taylor, C. (2012). *Harvard Business Law Review Online,* 2, p. 108.
[21] Conflict Minerals Legislation: The SEC's New Role as Diplomatic and Humanitarian Watchdog. Woody, K.E. (2012). *Fordham Law Review*, 81, p. 1328.
[22] http://www.conflictfreesourcing.org/events/13th-conflict-free-sourcing-initiative-workshop/
[23] *A critical analysis of the SEC and NAM economic impact models and the proposal of a 3rd model in view of the implementation of section 1502 of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act*. Bayer, C. & de Buhr, E. (2011), p. 35.
[24]. Appeals Court hears conflict minerals arguments. Dipietro, B. (2014). *The Wall Street Journal. Blog: Risk and Compliance Journal*, January 7 2014. http://blogs.wsj.com/riskandcompliance/2014/01/07/appeals-court-hears-conflict-minerals-arguments/
[25] Michael R. Littenberg and Farzad F. Damania. "Conflict Minerals Compliance: Observations and Recommendations for 2014 and Beyond" *Schulte Roth & Rabel*" 22 January 2014. http://www.srz.com/Conflict_Minerals_Compliance_Observations_and_Recommendations_for_2014_and_Beyond/
[26]. *Appeals court finds one aspect of conflict-minerals reporting to violate First Amendment and leaves the rest intact. Holland & Hart News Update*, April 16 2014. Brooks-Rubin, B. (2014) http://www.hollandhart.com/appeals-court-finds-one-aspect-of-conflict-minerals-reporting/
[27] Interview with civil society group in Goma, 15 February 2014.
[28] Interview with mining cooperative in Misisi, February 2014.
[29] Interview with the president of the South Kivu branch of mining cooperatives (Gecomiski) in Bukavu, 12 February 2014; Focus group discussion with civil society groups in Bukavu, 12 February 2014; interview with civil society group in Goma, 15 February 2014.
[30] Interview with the President of ANEMISA in Bukavu, 12 February 2014.
[31] Interview with public servant in Bukavu, 12 February 2014; interview with civil society group in Bukavu, 12 February 2014; focus group discussion with civil society groups in Bukavu 12 February 2014; interview with the President of Anemisa in Bukavu, 12 February 2014; interview with civil society group in Goma 16 February 2014; interview with civil society group in Goma, 17 February 2014.
[32] 'A dangerous bet: the challenges of formalizing artisanal mining in the Democratic Republic of Congo', Sara Geenen (2012), in: *Resources Policy* 37: pp. 327-328.
[33] Interview with the president of FEC in Shabunda, February 2014.
[34] Field report Rémy Kasindi: p. 2.
[35] 'Treatment of multidrug-resistant tuberculosis in a remote conflict-affected area of the Democratic Republic of Congo', L. Shanks et al. in: *The International Journal of Tuberculosis and Lung Disease* 16 (8) 2012: p. 1066.
[36] 'Rural road (re)construction, transport and rural livelihoods in the conflict-affected and fragile state environment of South Kivu', Adriaan Ferf et al. (s.d.), unpublished SLRC study: p. 23.
[37] Transport companies working along the Shabunda-Bukavu axis witnessed a sharp decline in the volume of their activities. Agefreco and Swala-Congocom saw the number of flights diminish from 18 to 6 a week (interview with the president of Gecomiski in Bukavu, 12 February 2014).
[38] S/2012/843: §227.
[39] Information from the website of the documentary 'Obama's Law', www.obamaslaw.com, accessed on 24 March 2014.
[40] Interview with public servant in Bukavu, 12 February 2014.

[41] Fidel Bafilemba, Timo Mueller, and Sasha Lezhnev, '*The Impact of Dodd-Frank and Conflict Minerals Reforms on Eastern Congo's Conflict',* The Enough Project (June 2014): pp. 8.
[42] Focus group discussion with civil society groups in Bukavu, 13 February 2014.
[43] Focus group discussion with civil society groups in Bukavu, 13 February 2014.
[44] Interview with a mining cooperative in Goma, 15 February 2014.
[45] Interview with public servant in Bukavu, 15 February 2014.
[46] '*The six tools of RINR'*, www.icglr.org, accessed on 17 March 2014.
[47] '*Coming clean. How supply chain control scan stop Congo's minerals trade fuelling conflict'*. Global Witness 2012: pp. 11-12.
[48] Interview with Save Act Mine in Goma, 15 February 2014.
[49] Interview with OGP in Goma, 15 February 2014.
[50] Arrêté provincial n°12/035/GP/SK du 22/10/2012 *portant mise en place du Comité Provincial de Suivi au Sud-Kivu de l'application des recommendations, resolutions et engagements des acteurs du secteur minier à l'issue de la réunion de concertation tenue à Kinshasa du 25 février au 1 mars 2011*.
[51] *Arrêté ministériel nr. 52 cab min/mines/01/2012 du 29 février 2012 portant mise en oeuvre du mécanisme régional de certification de la CIRGL en RDC*, article 20.
[52] Report of the Secretary-General on the United Nations Organization Stabilization Mission in the DRC, S/2013/96: §58.
[53] Field report Claude Iguma: p. 4. See also the letter from the Provincial Minister of Mines of South Kivu to the Commander of the 10th Military Region of South Kivu, 25 June 2012.
[54] Ministerial Decree of 29 February 2012, fixing the procedures for the qualification and validation of mining sites in the gold and tin trading chains in the provinces of Katanga, Maniema, North Kivu, South Kivu and Orientale Province.
[55] '*Coming clean: how supply chain controls can stop Congo's mineral trade fuelling conflict'*, Global Witness (2012): p. 12.
[56] There is a curious and remarkable difference between the performance of the *équipe conjointe* in South Kivu and those in the neighboring provinces of Maniema and Katanga. In the latter two provinces, the number of validated mining sites is a lot higher (Interview with public servant in Bukavu, 12 February 2014).
[57] E-mail from Uwe Naeher (BGR), 27 March 2014.
[58] Telephone interview with Pact official, 19 March 2014.
[59] Nevertheless, Mr. Naeher maintained that 'BGR never had problems with financing the missions' and he insisted that there were other, more important reasons for the low number of validation missions (e-mail from Uwe Naeher (BGR), 27 March 2014).
[60] Informal conversation with public servants and mining operators in Bukavu, 18 February 2014.
[61] E-mail from Uwe Naeher (BGR), 27 March 2014.
[62] In 2009, Bisie produced 70 per cent of all cassiterite in North Kivu. (source: '*Impact de l'exploitation minière sur l'économie et le social de Walikale'*, CERN-CENCO, December 2013: p. 65).
[63] On February 26th 2014, Radio Okapi reported that Sheka was controlling approximately 10 cassiterite and gold mine sites in Walikale, and was forcing local artisanal miners to pay a protection tax of 1000 Congolese francs per person (source: '*Nord-Kivu: les Maï- Maï Checka occupent une dizaine de localités sur l'axe Walikale-Masisi'*, Radio Okapi, 26 February 2014'.
[64] Interview with civil society group in Goma, 14 February 2014; Interview with civil society group in Goma, 15 February 2014; Interview with mining analyst in Goma, 15 February 2014; Interview with public servant in Goma, 15 February 2014; Interview with mining cooperative in Goma, 15 February 2014. Ntabo Ntaberizi Sheka is a former member of the mining cooperative COMIMPA and a former employee of the company Mineral Processing Congo, which holds the exploration rights to the Bisie mine (S/2010/596: §34-§43). Together with FDLR combatants and residual elements of Lieutenant-Colonel Emmanuel Nsengiyumva, Mai Mai Sheka took part in a series of attacks on civilians in 13 villages along the Kibua-Mpofi axis in Walikale territory between 30 July and 2 August 2010, which were coupled with serious human rights violations (source: *Final Report of the fact-finding missions of the United Nations Joint Human Rights Office into the mass rapes and other human rights violations committed by a coalition of armed*

groups along the Kibua-Mpofi axis in Walikale territory, North Kivu, from 30 July to 2 August 2010).

[65] Interview with a member of North Kivu's Joint Assessment Team in Goma, 15 February 2014.

[66] Interview with civil society group in Goma, 14 February 2014; Interview with international NGO in Goma, 16 February 2014; Interview with Congolese mining expert in Goma, 17 February 2014.

[67] The Itsci project first started in Rwanda in December 2010. While, in April 2012, 400 Rwandan mine sites were taking part in the process, by May 2013, the tagging of minerals had become mandatory by Rwandan law and 96 tagging agents were carrying out the tagging of 3T minerals across Rwanda's 480 active mine sites. In the DRC, the first Memorandum of Understanding (MoU) for the implementation of Itsci was signed in 2010. After the official launch of the project in April 2010, Itsci proceeded to a first tagging exercise at the pilot site of Nyabibwe, South Kivu, while at the same time also carrying out a feasibility study in Bisie, North Kivu, in June 2010.[67] The Kabila mining embargo led to the suspension of Itsci's pilot project in Nyabibwe between September 2010 and October 2012. In Katanga, where the project was launched in March 2011 and where most of the 3T production takes place in the central and northern parts of the province, Itsci covered more than 80% of mine sites by October 2012 (i.e. in 175 out of 192 mines registered at that time). In March 2012, the Congolese Ministry of Mines signed a new MoU, which paved the way for the further extension of Itsci into Maniema and the two Kivu provinces. Maniema, which used to be home to a flourishing industrial mining industry during colonial times, witnessed the start of the Itsci program in December 2012. The governor of Maniema and the Provincial Minister of Mines took measures to prohibit the circulation of untagged minerals in the territories of Kalima and Kailo. By the end of June 2013, Itsci had an almost comprehensive coverage of mine sites in these two territories, although the amount of tagged minerals remained relatively low. It was not until early March 2014 that the provincial Minister of Mines of North Kivu announced the launch of the Itsci system in North Kivu. He stated that, from March 3rd onwards, cassiterite and coltan mined at 17 governmentally approved sites in the Rubaya sector of Masisi territory would be bagged and tagged according to Itsci procedures. In the Congolese press, this announcement was celebrated as the end of a three-year long de facto embargo on the export of minerals from North Kivu.

[68] Letter from the CEEC to the Governors of Katanga, North Kivu, South Kivu, Maniema, Kinshasa and the province Orientale, 12 January 2014.

[69] Interview with mining analyst in Goma, 15 February 2014.

[70] Projet d'Appui au Secteur Minier en RDC. For more information see www.prominesrdc.cd.

[71] Information from the Promines website, www.prominesrdc.cd, accessed on 10 March 2014.

[72] '*Rwanda: government issues the 1st ICGLR Mineral Export Certificate to boost mining sector*', press release Government of Rwanda, 5 November 2013.

[73] Press release ICGLR, www.icglr.org, accessed on 10 March 2014.

[74] Interview with public servant in Bukavu, 12 February 2014.

[75] Interview with public servant in Bukavu, 12 February 2014.

[76] Interview with a member of civil society in Goma, 15 February 2014.

[77] Letter from ADECADEWA to the National Representative of BGR in Kinshasa, 7 June 2013.

[78] MPC was not the only company interested in exploiting the Bisie mine, however. In 2005, the Groupe Minier Bangandula (GMB), a company established by a group of Congolese businessmen (including the well-known Alexis Makabuza) had concluded several lease agreements with the state company SAKIMA and was under the impression that one of these lease agreements concerned the Bisie mine. To make things even more complex, each of the two companies managed to secure support of the Congolese state, albeit at different levels: while GMB's lease agreements were recognized by the provincial administration, MPC's mining title was recognized by the National Ministry of Mines. Between 2005 and 2008, GMB had the upper hand and was able to present itself as the principle buyer of minerals in Bisie. This was largely thanks to a collaboration agreement it had concluded with the 85th Brigade of the FARDC, which, at that time, was stationed in the Bisie area. According to the terms of this agreement, GMB and the 85th Brigade jointly levied taxes on mining and mineral trading activities in the Bisie area (source: 'Conflict between industrial and artisanal mining in the Democratic Republic of Congo: case studies from Katanga, Ituri and Kivu', Ruben de Koning (2013), in: Sandra Evers, Caroline

Seagle & Froukje Krijtenburg (eds.), *Africa for sale? Positioning the state, land, and society in foreign large-scale land acquisitions in Africa*, Brill: Leiden & Boston.
[79] '*Alphamin acquires final 30% of the Bisie tin project, Democratic Republic of the Congo, and announces new director*', Alphamin press release, 10 September 2012.
[80] Information from the Alphamin website (alphaminresources.com, accessed on 10 March 2014).
[81] A first agreement was signed in June 2007, between MPC and COMIMPA. The two parties agreed to split the production 50:50. A second agreement was signed in March 2010. This time, it involved several other mining cooperatives as well. The agreement stipulated, amongst other things, that the mining cooperatives had to accept the presence of MPC in the area. As a result of the introduction of the Dodd-Frank Act and the suspension of all mining activities by President Kabila, the *creuseurs* were no longer very active at that time. In November 2013, new talks were held after complaints about MPC's failure to respect earlier agreements. It was decided to add an addendum to the 2010 agreement, which contained new commitments on the part of MPC with regard to the issue of community development. Interview with a member of a mining cooperative in Goma, 15 February 2014.
[82] '*Impact de l'exploitation minière sur l'économie et le social de Walikale*', CERN-CENCO, December 2013: p. 63.
[83] The authors of this report were unable to get a reaction from Alphamin on recent developments in Bisie.
[84] '*Baseline audit of mining companies in DRC for CTC certification: MHI, Masisi and Goma, North Kivu*', Michael Priester (2012): p. 6.
[85] *Baseline audit of mining companies in DRC for CTC certification: MHI, Masisi and Goma, North Kivu*', Michael Priester (2012): p. 6.
[86] '*Les minerais de Masisi face au défi du développement du territoire*', ASSODIP, August 2013: pp. 9-10.
[87] Interview with member of civil society in Goma, 17 February 2014; interview with mining cooperative in Goma, 15 February 2014; interview with member of North Kivu's Joint Assessment Team, 15 February 2014; interview with member of civil society in Goma, 14 February 2014.
[88] '*Pareco: land, local strongmen and the roots of militia politics in North Kivu*', Jason Stearns, Rift Valley Institute (2013): p. 45.
[89] S/2012/348: p. 17.
[90] '*Baseline audit of mining companies in DRC for CTC certification: MHI, Masisi and Goma, North Kivu*', Michael Priester (2012): p. 7.
[91] '*Entre espoir et désespoir: la longue nuit du secteur minier au Nord-Kivu*', Aloys Tegera (Pole Institute), November 2013.
[92] Information from the website of Casa Mining: www.casamining.com, accessed on 10 March 2014.
[93] Field report Claude Iguma Wakenge: p. 8.
[94] '*Mai-Mai Yakutumba: resistance and racketeering in Fizi, South Kivu*', Jason Stearns et al. (2013), Rift Valley Institute / Usalama Project: p. 37.
[95] S/2011/738: §178.
[96] Field report Claude Iguma Wakenge: p. 10.
[97] Interview Jose Diemel with Julius Mulya (CASA) in Lubumbashi, 23 March 2014.
[98] '*Entre espoir et désespoir: la longue nuit du secteur minier au Nord Kivu*', Aloys Tegera (Pole Institute), November 2013.
[99] 'Traxys to halt DR Congo purchases', ITRI press release, 5 May 2009.
[100] 'Companies involved in the trade in minerals from eastern DRC', Global Witness, July 2009.
[101] '*Thaisarco suspends Congo tin ore purchases*', Reuters, 18 September 2009.
[102] '*What's wrong with Dodd-Frank 1502? Conflict minerals, civilian livelihoods, and the unintended consequences of Western Advocacy*'. Laura Seay (2012), Working Paper 284, Center for Global Development.
[103] Information from the website of the Malaysia Smelting Corporation: www.msmelt.com, accessed on 25 March 2014.
[104] '*US buyers shun conflict minerals in Congo's east*', Reuters, 4 October 2011.
[105] Interview with company representative in Brussels, 5 February 2014; interview with mineral trader based in Goma, 2 April 2014.

[106] S/2012/348: §142; annex 44.
[107] '*Entre espoir et désespoir: la longue nuit du secteur minier au Nord Kivu'*, Aloys Tegera (Pole Institute), November 2013.
[108] In 2008, Panju exported 2351, 16 tons of cassiterite (see 'Comptoirs 2008, Kivu provinces DRC), Steven Spittaels & Filip Hilgert (www.ipisresearch.be).
[109] Exporters moving to Lubumbashi to get their business going after the lifting of Kabila's mining embargo in Spring 2011 experienced problems obtaining the necessary authorizations at the provincial level. First, they needed an authorization for transporting minerals from the mine area to Lubumbashi, signed by the Ministry of Interior. Then, in June 2012, they were told they had to pay a 'social contribution' of 500.000 US$ in order to be able to obtain all required export documents. (Source: Channel Research, 2012: p. 12).
[110] Itsci preliminary company audit, online summary V57190214.
[111] '*Rwanda mining surges as minerals certified 'conflict-free"*, Voice of America, 27 November 2013.
[112] '*Rwanda's mining ambitions'*, Africa Mining Intelligence, 27 August 2013.
[113] ITRI company preliminary audit online, 10 March 2014.
[114] '*African Smelting wards off armed groups'*, Africa Mining Intelligence, 11 June 2013.
[115] *Tin: Malaysia Smelting plants flag in Katanga'*, Africa Mining Intelligence, 4 July 2012.
[116] Comptoirs 2008, Kivu provinces DRC, Steven Spittaels & Filip Hilgert (IPIS).
[117] Interview with public servant in Bukavu, 12 February 2014; interview with négociant in Bukavu, 12 February 2014;
[118] The main shareholders of MMR are Kalyon Ltd and Shukrana Ltd, two companies that also own the *Société Minière du Katanga* (Somika), a Katangese copper and cobalt producer (source: Itsci company preliminary audit, 19 February 2014).
[119] '*Itsci field governance assessment Katanga. Key issues & recommendations for mitigation measures'*, April 2011-February 2012, Channel Research (2012): p. 8
[120] Information from the Congolese mining cadastre, portals.flexicadastre.com, accessed on 18 March 2014.
[121] Itsci company preliminary audit, 19 February 2014.
[122] '*Itsci field governance assessment Katanga. Key issues & recommendations for mitigation measures'*, April 2011-February 2012, Channel Research (2012): p. 11.
[123] '*The conflict-free status of minerals from Mai-Baridi and Kisengo, and the due diligence of MMR and CDMC: an evaluation'*, Gregory Mthembu-Salter, July 2011.
[124] Field report Claude Iguma: p. 4.
[125] Field report Claude Iguma: p. 7.
[126] Interview with civil society stakeholder, March 2014.
[127] *'The hill belongs to them'. The need for international action on Congo's conflict minerals trade*, Global Witness (2010), p. 21.
[128] *Tackling the challenges in commodity markets and on raw materials.* European Commission (2011), COM (2011) 25 Final; *Trade, Growth and development. Tailoring trade and investment policy for those countries most in need.* European Commission (2012), COM (2012) 22 Final.
[129] *Assessment of due diligence compliance cost, benefit, and related effects on selected operators in relation to the responsible sourcing of selected minerals. Final Report.* Böhme, K., Bugasjki-Hochriegl, P., Dos Santos, M. (2013).
[130] *Proposal for a regulation of the European Parliament and of the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas.* European Commission (2014), COM (2014) 111 Final, p. 5.
[131] *Proposed EU Law will not keep conflict resources out of Europe, campaigners warn.* Global Witness et al (2014). Joint press release, 5 March 2014
[132] *Report on promoting development through responsible business practices, including the role of extractive industries in developing countries.* European Parliament (2014), A7-0132/2014.